

**ARTICLE VI
ADMINISTRATION**

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

1. That pursuant to SDCL 11-2-49 the Brookings County Planning and Zoning Commission shall act as the Board of Adjustment.
2. Within Brookings County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.
3. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a Planning Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Planning Commissioner's place. The term of the Alternates shall be for three (3) years. (SDCL 11-2-50)

Section 6.04.02. Procedures for Meetings.

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chair and at such other times as the Board of Adjustment may determine. The Chair, or in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. (SDCL 11-2-51)
2. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and are public records. (SDCL 11-2-52)

Section 6.04.03. Powers and Duties of the Board.

The Board of Adjustment shall have the following powers and duties:

Administrative Review. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by a Zoning Official in the enforcement of this chapter or of any Ordinance adopted pursuant to this chapter. (SDCL 11-2-53)

1. Variance. Authorize upon appeal in specific cases such variance from terms of the Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance is observed and substantial justice done. (SDCL 11-2-53)
2. Conditional Uses. Hear and determine conditional uses as authorized by the zoning Ordinance. The uses shall be determined by an affirmative vote of the present and

voting members of the board of adjustment at a percentage specifically set forth in this zoning Ordinance at 6.05.01(8) (SDCL 11-2-53)

Section 6.04.04. Appeals, Record of Appeal, Hearing and Stays.

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Official and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the Zoning Official that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision. The applicant shall file with the Zoning Official a notice of appeal specifying the grounds thereof. The Zoning Official shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days after the filing of the decision in the Brookings County Development Department. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal. (SDCL 11-2-55)
3. An appeal to the Board of Adjustment stays all proceedings in the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record, on application, on notice to the officer from whom the appeal is taken and on due cause shown. (SDCL 11-2-56).
4. The Board of Adjustment shall hold at least one (1) public hearing of the appeal. Notice of the time and place shall be given at least fourteen (14) days in advance by publication in a legal newspaper of the county, and notice shall be given to the parties in interest. The Board of Adjustment shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.
5. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Official from whom the appeal is taken. (SDCL 11-2-58)
6. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. (SDCL 11-2-59)

7. The decision is considered filed with the Brookings County Development Department at the time it is signed by the Chair of the Board of Adjustment.

Section 6.04.05. Appeals to a Court of Record.

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the Brookings County Development Department. (SDCL 11-2-61)